

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL RESTO-OTERO,
Plaintiff,
v.

9:17-CV-1115
(GLS/ML)

IMAM MOHAMMAD,
Defendant.

APPEARANCES: OF COUNSEL:

MICHAEL RESTO-OTERO
Plaintiff Pro Se
10-B-1849
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13021

HON. LETITIA JAMES
New York Attorney General
The Capitol
Albany, NY 12224

DAVID A. ROSENBERG
Assistant Attorney General

GARY L. SHARPE
Senior United States District Judge

DECISION AND ORDER

Plaintiff Michael Resto-Otero commenced this civil rights action pro se in October, 2017, asserting claims pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, arising out of his confinement at Clinton Correctional Facility. Discovery closed on May 19, 2019. See Dkt. No. 29. On August 16, 2019, defendant Mohammad filed a motion for summary judgment. Dkt. No. 40. Instead of responding to the motion for summary judgment, plaintiff filed a letter motion to voluntarily

dismiss this action, wherein he stated, in pertinent part:

I am currently unable, do to various reasons, to pursue this matter. I would respectfully ask the Court at this time to withdraw suit. I would also respectfully request to be informed if there are any other papers, documents, etc. to complete this withdrawal.

Dkt. No. 42 at 1.

By Decision and Order filed on September 19, 2019, the Court conditionally dismissed the action with prejudice and afforded plaintiff twenty (20) days to file a written objection to the dismissal with prejudice. Dkt. No. 44 ("September 2019 Order"). The Court further advised plaintiff that, in the event he did not file an objection to the dismissal of this action with prejudice within twenty days, the following would occur: (1) plaintiff's motion to voluntarily dismiss this action (Dkt. No. 42) would be granted and the action would be dismissed with prejudice; (2) the Clerk would enter Judgment dismissing this action with prejudice, without further Order of this Court, and close this case; and (3) defendant's motion for summary judgment (Dkt. No. 40) would be denied as moot. *Id.*

More than twenty days has passed since the issuance of the September 2019 Order, and plaintiff has not filed anything further with the Court.

WHEREFORE, it is hereby

ORDERED that plaintiff's motion to voluntarily dismiss this action (Dkt. No. 42) is **GRANTED**; and it is further

ORDERED that defendant's motion for summary judgment (Dkt. No. 40) is **DENIED** as moot; and it is further

ORDERED that the complaint (Dkt. No. 1) is **DISMISSED with prejudice**; and it is further

ORDERED that the Clerk enter judgment accordingly and close this case; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on the parties.

IT IS SO ORDERED.

October 25, 2019
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge